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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: JUN 24 2002

IN RE: Applicant: [redacted]

Application: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This statute provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C), because he had reason to believe that the applicant is or has been an illicit trafficker in a controlled substance. The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on certification.

Pursuant to section 212(a)(2)(C) of the Act, any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible to the United States.

The record reflects that on February 21, 1986, in the United States District Court, Southern District of Florida, Case No. 85-925-Cr-ATKINS, the applicant was indicted for Count 1, conspiracy to use facilities in interstate and foreign commerce to facilitate a business enterprise involving controlled substances; and Count 2, conspiracy to import and to distribute quantities of cocaine.

While it is not clear whether the applicant was convicted of both Counts 1 and 2, the Order Terminating Probation dated March 22, 1988, contained in the record of proceeding, shows that the applicant was placed on probation for a period of 2 years on August 3, 1986, and that he has complied with the rules and regulations of probation and is no longer in need of probation supervision. Also contained in the record is a copy of a Certificate of Vacation of Conviction dated April 7, 1988, reflecting that the judgement of

conviction entered on July 1, 1986 under Case No. 85-925-Cr-ATKINS has been set aside pursuant to the provisions of section 5021(b), Title 18, U.S. Code.

Despite the fact that the court set aside the applicant's conviction, the district director, citing Matter of Rico, 16 I&N Dec. 181 (BIA 1977), and Matter of Tillighast, 27 F.2d 580 (1st Cir., 1928), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance.

The indictment report shows that the applicant conspired with four other defendants to offer and promote the sale of approximately one thousand kilograms of cocaine; that on September 20, 1984, the applicant met with undercover Drug Enforcement Administration agents and delivered a sample of cocaine to the agents; conspired to import quantities of cocaine, in excess of one kilogram, into the United States from a place outside; and conspired to distribute quantities of cocaine, in excess of one kilogram.

The record in this matter indicates that the applicant's conviction was subsequently dismissed. If such dismissal was an expungement, it should be noted that an expungement of drug-related convictions will not eliminate the convictions for immigration purposes for which no waiver is available. See Matter of A-F-, 8 I&N Dec. 429 (BIA, A.G. 1959); Matter of G-, 9 I&N Dec. 159 (BIA 1960; A.G. 1961); Matter of Ibarra-Obando, 12 I&N Dec. 576 (BIA 1966; A.G. 1967). The Attorney General, in Matter of A-F-, supra, also examined the effect of expunction procedures on convictions for narcotics offenses, concluding that Congress did not intend for a narcotics violator to escape deportation as a result of a technical erasure of his conviction by a state. In so finding, the Attorney General noted the federal policy to treat narcotics offenses seriously and determined that it would be inappropriate for an alien's deportability for criminal activity to be dependent upon "the vagaries of state law."

Although the record in this matter indicates that the applicant's conviction was dismissed, the arrest taken in conjunction with the court's indictment report is sufficient to support the district director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not he was actually convicted. Matter of Rico, supra.

[redacted]

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.